

## Senate Bill No. 1021

### CHAPTER 54

An act to amend Section 16337 of, and to add Chapter 5 (commencing with Section 16500) to Part 4 of Division 9 of, the Probate Code, relating to trusts.

[Approved by Governor June 21, 2004. Filed with  
Secretary of State June 22, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1021, Poochigian. Trusts.

Existing law provides for the creation, modification, and termination of trusts, and regulates the acts of trustees in administering a trust. Existing law establishes provisions by which a trustee may give a notice of proposed action regarding certain matters.

This bill would revise and recast the provisions by which a trustee may give a notice of proposed action. The bill would enlarge the circumstances under which a notice of proposed action could be used, the circumstances under which it is not to be used, to whom it is to be given, and the methods by which a beneficiary may object to a proposed action.

*The people of the State of California do enact as follows:*

SECTION 1. Section 16337 of the Probate Code is amended to read:

16337. A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in Chapter 5 (commencing with Section 16500). For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

SEC. 2. Chapter 5 (commencing with Section 16500) is added to Part 4 of Division 9 of the Probate Code, to read:

#### CHAPTER 5. NOTICE OF PROPOSED ACTION BY TRUSTEE

16500. Subject to subdivision (d) of Section 16501, a trustee may give a notice of proposed action regarding a matter governed by Chapter 2 (commencing with Section 16200) or Chapter 3 (commencing with Section 16320) as provided in this chapter. For the purpose of this chapter, a proposed action includes a course of action or a decision not to take action. This chapter does not preclude an application or assertion of any other rights or remedies available to an interested party as

otherwise provided in this part regarding an action to be taken or not to be taken by the trustee.

16501. (a) The trustee who elects to provide notice pursuant to this chapter shall mail notice of the proposed action to each of the following:

(1) A beneficiary who is receiving, or is entitled to receive, income under the trust, including a beneficiary who is entitled to receive income at the discretion of the trustee.

(2) A beneficiary who would receive a distribution of principal if the trust were terminated at the time the notice is given.

(b) Notice of proposed action is not required to be given to a person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(c) A trustee is not required to provide a copy of the notice of proposed action to a beneficiary who is known to the trustee but who cannot be located by the trustee after reasonable diligence or who is unknown to the trustee.

(d) Notwithstanding any other provision of this chapter, the trustee may not use a notice of proposed action in any of the following actions:

(1) Allowance of the trustee's compensation.

(2) Allowance of compensation of the attorney for the trustee.

(3) Settlement of accounts.

(4) Preliminary and final distributions and discharge.

(5) Sale of property of the trust to the trustee or to the attorney for the trustee.

(6) Exchange of property of the trust for property of the trustee or for property of the attorney for the trustee.

(7) Grant of an option to purchase property of the trust to the trustee or to the attorney for the trustee.

(8) Allowance, payment, or compromise of a claim of the trustee, or the attorney for the trustee, against the trust.

(9) Compromise or settlement of a claim, action, or proceeding by the trust against the trustee or against the attorney for the trust.

(10) Extension, renewal, or modification of the terms of a debt or other obligation of the trustee, or the attorney for the trustee, owing to or in favor of the trust.

16502. The notice of proposed action shall state that it is given pursuant to this section and shall include all of the following:

(a) The name and mailing address of the trustee.

(b) The name and telephone number of a person who may be contacted for additional information.

(c) A description of the action proposed to be taken and an explanation of the reasons for the action.



(d) The time within which objections to the proposed action can be made, which shall be at least 45 days from the mailing of the notice of proposed action.

(e) The date on or after which the proposed action may be taken or is effective.

16503. (a) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(b) A trustee is not liable to a beneficiary for an action regarding a matter governed by this part if the trustee does not receive a written objection to the proposed action from a beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action. This subdivision does not apply to a person who is a minor or an incompetent adult at the time of receiving the notice of proposed action unless the notice is served on a guardian or conservator of the estate of the person.

(c) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(d) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

16504. This chapter does not require a trustee to use these procedures prior to taking any action.

